

BULGARIA'S QUEST TO MEET THE ENVIRONMENTAL ACQUIS: A CASE STUDY OF THE TRANSFORMATIVE POWER OF THE EU

Taking Bulgaria as an example, this article examines how the EU accession process transforms a key policy area – the environmental sector. Starting with a disastrous legacy and very weak institutions ten years ago, Bulgaria's environmental policies have been dramatically transformed in the decade preceding the country's EU accession in 2007. Although a number of the problems have not been (fully) overcome yet, Bulgaria now has the institutions and policy tools in place to address the remaining challenges. This stands in stark contrast to the situation in 1997 and illustrates what a powerful reform motor the EU accession process is.

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Environment is one of the areas which posed the biggest challenges for the East European candidate countries in the run-up to their accession. The environmental legacies of most post-communist countries, with their focus on heavy industry, were appalling. By the late 1980s, large areas of Eastern and Southeastern Europe suffered from excessive air pollution, water pollution and land degradation.¹

Institutionally, the challenge consisted of incorporating over 200 EU directives, regulations and decisions into national legislation, making environment the third most comprehensive chapter of the *acquis* after agriculture and the free movement of goods. This required a complete overhaul of existing legislation and the creation of many new laws and policies.

But meeting the environmental *acquis* also required the implementation of many huge –and extremely expensive– investment projects, particularly in the sewage and waste sectors. The European Council (EC) estimated in 2001 that the implementation costs for the environmental *acquis* in all ten East European former communist accession countries would total between 78 and 109 billion euros (of which 8.6 billion euros would have to be spent in Bulgaria).²

It was clear that these wide-reaching changes could not be made overnight. All new members negotiated transitional periods under the environment chapter, expiring in 2017 at the latest. So the task is not accomplished yet.

Nevertheless, this very challenging sector is one of the areas where one can best observe the difference that the accession process makes in key policy areas. In this article we look at the transformation that took place in this sector in the decade leading up to Bulgaria's accession in 2007. It shows that the EU accession process has the power to trigger massive institutional change even in countries that appear far from meeting EU membership criteria and standards.

¹ Petr Pavlinek and John Pickles "Environmental Pasts/Environmental Futures in Post-Socialist Europe", in: JoAnn Carmin and Stacy D. VanDeveer (eds.), *EU Enlargement and the Environment. Institutional Change and Environmental Policy in Central and Eastern Europe*, Routledge, 2005, pp. 237-265, p. 239.

² EC, Communication from the Commission: The Challenge of Environmental Financing in the Candidate Countries, 2001, quoted in ECOTEC, *The Benefits of Compliance with the Environmental Acquis for the Candidate Countries*, July 2001, p. 15.

The Challenge

In 1997, Bulgaria's environmental situation was a disaster. Communism left Bulgaria with a legacy of inefficient use of energy and raw materials, as well as outdated and highly polluting technologies. In 1992, an environmental strategy was drawn up with help of the World Bank, and some basic legislation was put in place, but as an OECD study noted in 1996:

Implementation of environmental policy and investments for environmental improvement have not followed. Development of the regulatory framework has been delayed by a slow legislative process. Mobilising resources from enterprises, government and households is proving difficult in view of economic constraints. Pollution loads to air and water have been reduced, but mainly because of declines in production; a resumption of economic growth could increase pressures on the environment.³

The EC's avis on Bulgaria from 1997 stated:

Local air quality poses significant risks to human health. Waste is an area of major concern: waste management practices are elementary, especially for disposal activities, and incineration is not regulated. Soil pollution and erosion are also serious.⁴

In certain areas, there was no legislation at all. In the chemicals production sector, for example, there were some standards on safety and working conditions, but no environmental standards.⁵ In other areas, "a key challenge [was] to reform a system of very strict but un-enforced standards, dating from previous decades, into realistic standards [...] Enforcement mechanisms [were] weak, largely limited to low fines on air, water and soil pollution."⁶ There was no coherent system for licensing big industrial plants with regard to environmental standards. 39 percent of Bulgaria's waste water was discharged untreated.⁷

³ OECD, *Environmental Performance Reviews – Bulgaria*, OECD, 1996, conclusions and recommendations.

⁴ EC, *Commission Opinion on Bulgaria's Application for Membership of the European Union*, 15 July 1997, p. 94.

⁵ ESI interview with Eulina Milova, head of the European Integration Department in the Ministry for Environment and Water, 20 October 2006.

⁶ OECD, *Environmental Performance Reviews – Bulgaria*, OECD, 1996, conclusions and recommendations.

⁷ Ministry of Environment and Water, *National Strategy – Environment Sector*, October 2000, p. 9.

Moreover, with a few exceptions, none of Bulgaria's landfills met EU criteria, designed to prevent leaks and the pollution of soil, water and air.⁸ At the end of the 1990s, "the present levels of environmental expenditures [did] not cover all waste management costs in order to guarantee protection of the human health and the environment [...] The efficiency of the control structures, information gathering and planning capacities are insufficient, especially at municipal level."⁹

Around 77% of the total amount of treated hazardous waste is disposed of in own landfills on site of the enterprises. These landfills have exhausted their capacity and do not comply with the requirements of the present national legislation.¹⁰

Two actors were in charge of environmental policies in 1997; the Ministry of Environment and Water, which included a "National Environment Protection Fund", and the municipalities.¹¹ Their capacity to address the huge challenges was extremely low – combined spending by the ministry and the fund on environmental investment projects in 1997 amounted to not more than 4.5 million euros.¹²

Imagine the task in 1997. To be able to move from the situation described above to compliance with EU rules seemed impossible. The EU environmental acquis comprises over 200 legal acts, covering horizontal legislation, water and air pollution, management of waste and chemicals, biotechnology, nature protection, industrial pollution and risk management, noise and radiation protection.¹³ But the transposition of EU legislation would only be a first step. Entirely new institutions needed to be created and existing ones considerably strengthened in order to be able to implement new laws and policies. Hundreds of staff would need to be trained. Coordination between the institutions involved would need to be enhanced. The relationship between the government and the public, in particular companies and NGOs, would need to change considerably. The government would have to earmark huge amounts of money for investments necessary to meet EU standards. In 1997, the European Commission estimated the total financial costs for the implementation of the environmental acquis in Bulgaria at 15 billion euros, a figure lowered to 8.6 billion euros in 2001.¹⁴

⁸ Ibid., p. 24.

⁹ Ibid., pp. 25-26.

¹⁰ Ibid., p. 25.

¹¹ Ibid., pp. 13-15.

¹² Ibid., p. 26.

¹³ EC, *Bulgaria – 2005 Comprehensive Monitoring Report*, 25 October 2005, p. 59.

¹⁴ Source for both figures: EC, Communication from the Commission: The Challenge of Environmental Financing in the Candidate Countries, 2001, quoted in: ECOTEC, *The Benefits of Compliance with the Environmental Acquis for the Candidate Countries*, July 2001, p. 15.

Spending such an amount was a huge challenge for a number of reasons; firstly, because of the sheer size of the investments. How can a ministry develop the capacity to plan projects for hundreds of millions, even billions of euros when in 1997 –together with the National Environment Protection Fund– it spent no more than 4.5 million euros? Secondly, as of 2000, any EU-supported environmental project implemented in Bulgaria had to comply with strict EU standards. Each had to include a feasibility study, an environmental impact assessment, involve public consultation and follow EU tender, contracting and accounting rules.

Meeting environmental standards and spending money according to EU rules required hundreds of new experts who still needed to be trained. It directly affected thousands of people in ministries, governmental agencies, regional and municipal bodies, NGOs and companies. Even assuming determined political will, this was still a tremendous challenge.

EU Assistance

The EU offered significant assistance:

First, it provided intensive guidance on how Bulgaria’s legislation needed to change to meet EU standards and on the kind of institutions needed for implementation. In an exercise called “screening”, EC and Bulgarian experts looked at Bulgarian environmental legislation and institutions, analyzing what was compatible with EU legislation and what was not. This took place for the first time in 1998-99, after Bulgaria became a candidate, and again in the run-up to the opening of negotiations on the environment chapter (on 27 July 2001). The exercise was a sort of x-ray of the situation in Bulgaria and showed what the EU expected to change in this area.

Two other key documents provided overall guidance. In 1998, the first Accession Partnership with Bulgaria was signed. This document, prepared and regularly up-dated by the EU, “would be the key feature of the enhanced pre-accession strategy.”¹⁵ It set out the priority areas for further work as identified by the European Commission, from the political and economic criteria to specific areas such as agriculture, internal market, energy, economic and social cohesion, and environment. It also outlined the areas on which EU assistance would focus.

¹⁵ Accession Partnership with Bulgaria, 1999, p. 2.

The second document, prepared by the accession countries, was the National Programme for the Adoption of the Aquis (NPAA). Essentially, it consisted of a huge excel sheet, placing every piece of EU legislation side-by-side with the respective Bulgarian law through which it would be implemented, giving a defined time-frame, identifying resources and citing the government institutions responsible.

In addition to these general documents, there was substantive guidance from the EU's side with regard to the environmental sector. At the end of 1999, a draft version of the Handbook on the Implementation of EC Environment Legislation was made available to the accession countries. This huge 742-page document provided overviews of all important sectors such as air quality, waste management, water protection, industrial pollution control and risk management, followed by detailed sections ("fiches") on all relevant directives and regulations. Separate sections were provided for 61 directives, 14 regulations and three decisions.¹⁶

In May 2000 an informal EC working document appeared, entitled "Main administrative structures required for implementing the acquis", followed later by up-dated versions. It was very concise (some 90 pages), explaining the institutional setting required for the implementation of EU legislation in each chapter. It remained unofficial, reflecting the Commission's reluctance to define specific administrative models in areas where member states administrations were so diverse.¹⁷

Clear and ambitious commitments were necessary to advance in the negotiations and eventually close the chapter. This set a very ambitious reform agenda.

Second, the EU provided technical assistance to help build up required institutional capacity. A total of 22 projects (or sub-projects) were put into place between 1998 and 2005, ranging from general support (development of strategies, plans, transposition of legislation) and the strengthening of individual parts of the administration to implementing specific directives and to the training of officials at regional and local levels.

¹⁶ EC, *Handbook for Implementation of EU Environmental Legislation*, Draft November 1999, Introduction, p. 3.

¹⁷ Heather Grabbe, *The EU's Transformative Power. Europeanization through Conditionality in Central and Eastern Europe*, Palgrave, 2006, p. 79.

Most of these projects included “twinning”, where the Bulgarian authorities would engage EU member state governmental institutions to provide long-term assistance on a specific task of institutional reform. Twinning involved the permanent presence of a “resident twinning adviser” in the Bulgarian beneficiary institution for the whole project period, usually between 12 and 24 months. In addition, short- and mid-term experts would be brought in. It is important to note that although the projects were financed through Phare (the institution-building program of the EU for accession countries), it was the Bulgarian authorities who had the final say in choosing the EU partner agencies after an open tender procedure where EU member state government institutions could apply. Twinning programs were often accompanied by some Phare investment funds for necessary equipment.

Third, and most important, was the EU’s assistance budget for investments in the environmental area. This was central to the capacity building effort. While huge sums were put on the table, they could only be spent as institutional capacity developed.

Starting from 2000, the accession countries benefited from the Instrument for Structural Policies for Pre-accession (ISPA), a specially developed program oriented at the EU structural funds. ISPA was made available for environment and transport sector projects in the accession countries.

In the year 2000, ISPA funds for the environment in Bulgaria amounted to 52 million euros. In the same year, funds from the national budget and the National Environment Protection Fund amounted to 32.5 million euros. Municipalities contributed 4.2 million euros.¹⁸ Compared to 1997, considerably more national funds were spent on environment, triggered by the requirement for domestic co-financing of EU projects and the need to improve infrastructure in order to meet EU requirements.

In order to spend these funds, a number of preconditions had to be met. Every environment investment project which involved any ISPA funding had to comply with very strict standards. A national environmental strategy, providing an analysis of the situation and defining priorities, had to be developed before funds were made available. This strategy also had to be coordinated with other planning documents such as the Accession Partnership and the National Development Plan.

¹⁸ Ministry of Environment and Water, National Strategy – Environment Sector, October 2000, p. 28.

Project applications usually consisted of a file that was 10-15 centimeters high, including the completed application form, a description of the project, a feasibility study, a cost-benefit analysis, a timetable, a preliminary environmental impact assessment, a financial plan, and annexes with mostly technical data, all in English.

An “EU Funds for Environment” directorate was set up in the ministry. By 2005 it had grown to 35 people, many of them engineers in charge of the preparation and implementation of ISPA projects (in addition, some projects were implemented by the Ministry of Regional Development and Public Works).

Given that project costs were never below ten million euros and could sometimes exceed 40 million euros, preparation took from several months to up to two years, depending on the size of the project. Capacity to deal with such projects had to be built up; in numerous instances the EC demanded improvements in the applications if they did not meet required standards. Once the EC approved a project, an equally comprehensive tender documentation had to be prepared before actual construction could begin. To follow and oversee this process, a set of monitoring and evaluation bodies had to be established; these also needed to make information publicly accessible.

It often took three to four years from a project’s inception before construction began. Although most acceding countries were more efficient than Bulgaria, all had problems with ISPA due to the program’s cumbersome and time-consuming procedures. Particularly for countries starting from a low level of administrative capacity like Bulgaria, it was a crucial learning process, and helped a lot in building up necessary capacity.

Throughout the whole seven-year period from 2000 to 2006, the EU invested more in the environmental sector than all Bulgarian institutions put together. In total, 22 environmental projects with a total value 643 million euros were accepted by the Commission. Of the total project funds, ISPA would cover 411 million euros, slightly less than two-thirds of the total costs. The remainder would be financed by Bulgaria (170 million euros) and IFIs (62 million euros).¹⁹

¹⁹ Ministry of Finance of Bulgaria, Financial Implementation of ISPA, National Funds Directorate, 30 November 2008. The remainder of allocated ISPA funds, totalling € 880 million is spent on transport infrastructure projects and technical assistance.

Due to the complicated and demanding processes of preparing tender procedures according to EU standards, contracting and payment took time. Of the total amount of 643 million euros, 344 million euros or 54 percent have been contracted and 159 million euros or 25 percent spent by November 2008.²⁰ While spending has been even slower than in other accession countries, the 159 million euros still represents double the amount that had been paid out by August 2007 (80 million euros), which means that spending is accelerating.

Guidance for legislative changes, support for building up new institutions and strengthening existing ones, and funding for the environment sector were crucial in bringing about intrinsic transformation – defying the argument that institutional capacities have to be built up before the accession process can begin in earnest. Capacity building, in other words, is a key feature of member state building, but not a precondition. In order to produce the impressive results that Bulgaria has achieved, all three components – guidance, capacity building and funding – are needed at the same time.

Monitoring and Mobilization of the Public Sector and Society

While the accession process starts in earnest with an assessment of what a country has to do to comply with the *acquis* (screening), progress assessments remain crucial throughout the whole process, making a country's track record transparent and accessible to the public and thereby keeping pressure on the government.

Starting in 1998, annual reports examined the extent to which the legislative and institutional situation had improved in the accession countries. The 2005 Comprehensive Monitoring report for Bulgaria, for example, notes in one section:

As regards waste management, legislation is basically in place and is in line with the *acquis*, except for the *acquis* on polychlorinated biphenyls, polychlorinated terphenyls and waste oils. Draft legislation has been prepared but not yet adopted. Concerning batteries, the legal basis for transposing the *acquis* has been adopted recently. Administrative capacities are in place. However, substantial attention still needs to be paid to recruiting additional specially trained human resources [...].²¹

²⁰ Source: Bulgarian Ministry of Finance, Financial Implementation of ISPA, various dates, own calculation.

²¹ EC, *Bulgaria – 2005 Comprehensive Monitoring Report*, 25 October 2005, pp.59-60.

The report's chapter on environment deals with all major areas, from horizontal legislation (for example, how environmental impact assessments have to be done) to specific legislation on air quality, water quality, nature protection, industrial pollution, chemicals, genetically modified organisms, noise and nuclear safety and radiation protection.

It is misleading to think of this process as involving only a handful of EU and Bulgarian officials. From the outset, hundreds of people –later on, thousands– were involved. These included the regional inspectorates of the environment ministry, as well as many other administrative bodies such as the veterinary service, laboratories, and 262 municipalities. In addition, it affected the staff of the 49 modern water supply and sewage companies (of which 29 cover more than one municipality), 67 waste water treatment plants, the remaining waste companies and landfills, as well as the power plants.²² Thousands of companies were also affected by the new legislation. Aside from the big companies who needed permits in accordance with the “Integrated Pollution Prevention and Control” directive, many smaller companies had to meet requirements for industrial waste, packaging waste and recycling.

What Has Been Achieved After One Decade?

Bulgaria has transposed virtually the whole *acquis* in the environment sector with very few exceptions (mainly related to very recent directives and regulations). The *acquis* has been transposed through a series of new framework laws, most notably the environmental protection act, the water act, the waste management act and the clean air act. At least another nine laws were considerably modified, and at least 31 new regulations and 20 ordinances adopted.²³

Bulgaria's institutions in this sector have been dramatically transformed. According to Eulina Milova, head of the European Integration department of the Ministry of Environment and Water in 2006, “the environment sector was completely restructured due to the accession process; due to the obligations undertaken in order to meet the EU criteria, a completely new legislative framework had to be adopted and virtually nothing stayed the same.”²⁴ Eulina Milova belongs to the army of young people in their 20s and 30s who have dramatically changed the

²² Government of Bulgaria, *Operational Programme Environment 2007-2013*, Sofia, draft May 2006, p. 11.

²³ See website of the Bulgarian Ministry of Environment and Water, section EU integration – harmonization.

²⁴ ESI interview with Eulina Milova, head of the European Integration Department in the Ministry for Environment and Water, 20 October 2006.

Bulgarian administration on its way to the EU. The number of ministry staff has doubled since 2002, to more than 2,000 people in 2006, on the eve of accession. The adoption and implementation of the EU's directives and regulations has had an impact on virtually all directorates and departments, who have had to build up the capacity to implement the respective policies. While administrative structures need further strengthening, the accession process –since 1997– has changed the structure and work of the ministry beyond recognition.

Although improvements in the environmental sector take time, some results are already visible. Due to the construction and modernization of waste water treatment plants, the share of treated waste water of total waste water rose from 62 percent in 2000 to 79 percent in 2004.²⁵ Of 5,135 illegal waste dumps still existing in 2002, 3,554 were closed by the end of 2004. The share of the population covered by municipal waste collection increased in four years from 78 percent to 84 percent in 2004. At the same time, the amount of municipal waste collected annually decreased from 518 to 472 kilograms per capita, considerably below the EU-15 average of 580 kilograms.²⁶

While in 1997 virtually none of the Bulgarian landfills met EU criteria, Bulgaria committed itself to establish a system of 54 regional landfills by 16 July 2009. This requires reconstruction of the existing regional landfills and construction of new ones for the disposal of all the municipal waste generated in the country. Gradually, all existing landfills for municipal waste that do not meet the new technical standards will have to be closed. By the end of 2004, 20 of the envisaged regional landfills for municipal waste were constructed and put into operation, 12 were under construction, and the remainder were at different stages of preparation.²⁷

According to the “Integrated Pollution Prevention and Control” (IPPC) directive of the EU, all larger factories and other industrial installations had to obtain integrated authorization permits by end of October 2007 (this deadline applied to all member states).

The “integrated approach” means that “the permits must take into account the whole environmental performance of the plant, covering e.g. emissions to air, water and land, generation of waste, use of raw materials, energy efficiency,

²⁵ Ministry of Environment and Water, *Operational Programme Environment 2007-2013*, 2007, p. 16.

²⁶ *Ibid.*, pp. 29, 22, 21.

²⁷ *Ibid.*, p. 25.

noise, prevention of accidents, and restoration of the site upon closure. The purpose of the Directive is to ensure a high level of protection of the environment taken as a whole.”²⁸ The directive covers about 52,000 installations in the whole EU. By April 2008 only five of the 27 member states have issued permits for all companies falling under the directive. Bulgaria (though having negotiated a transition period for 41 companies), had by then issued 70 percent of the necessary permits, clearly ahead of Portugal (56 percent), Slovenia (40 percent) and Greece (35 percent).²⁹

Bulgaria’s environmental transformation has not yet come to an end, however. The sheer size of the challenge in the environmental sector makes it clear that the process needs more time. In a number of areas, transitional periods have been negotiated to allow more time to implement the changes, in particular for covering Bulgaria with EU-standard landfills and waste water treatment plants (until 2014), but also to meet recycling requirements originating from the EU directive on packaging (until 2011) and to bring some of the heavy polluters in line with EU air-emission standards (until 2014).

Imagine Bulgaria in 2014. No stone in the environment sector will have been left unturned. All transitional periods will have come to an end. Even then, in some areas there will be still considerable concerns, but Bulgaria will not be recognizable in terms of its environment protection measures. The Bulgarian Operational Program “Environment 2007-2013” foresees total investments of 1.8 billion euros in the environment sector, most of which will go into waste water treatment and waste treatment. 1.47 billion euros will be provided through the EU’s Structural and Cohesion Funds.³⁰

This money will be well invested. A comprehensive study on the environmental, economic and social benefits of alignment with the environmental acquis in acceding countries estimates potential annual benefits for Bulgaria (after full compliance) at between 290 million and 2.2 billion euros.³¹ Such benefits include better public health, less damage to natural resources, increased tourist numbers, increased economic efficiency and higher productivity as a result of

²⁸ EC, DG Environment, <http://ec.europa.eu/environment/air/pollutants/stationary/ippc/summary.htm>.

²⁹ EC, DG Environment, “IPPC permitting situation in the Member States by 30 April 2008”, see: <http://ec.europa.eu/environment/air/pollutants/stationary/ippc/pdf/grids2.pdf>.

³⁰ Ministry of Environment and Water, *Operational Programme Environment 2007-2013*, 2007, p. 79.

³¹ ECOTEC, *The Benefits of Compliance with the Environmental Acquis for the Candidate Countries*, July 2001, p. 54. The report notes that no single figures can be given, but the range given should be seen as an indicator of prospective benefits.

modern technology use, lower consumption of primary materials, and support for employment.

The style of government is also expected to change, enhancing more democratic practices and engaging large segments of society. EU provisions provide for a strong focus on public participation. On chemicals production, for example, the EC requires

that the competent authority has taken steps to consult stakeholders, and has prepared and publishes guidance notes for them. The stakeholders include environmental agencies working on behalf of central government (e.g. regulatory authority, national standards laboratory, veterinary service), regional and local government, municipalities, chemical industry (dangerous substances, manufacture of products including asbestos), construction industry, the public and research institutions (e.g. universities).³²

Member state building in the area of environment has had a revolutionary impact on the public sector – not only on laws, but also on institutions. It has revolutionized relations between the public sector and the public through its insistence on vastly improved and transparent information. It required an unprecedented level of co-ordination between public institutions and national investments to co-finance EU funded measures. This in turn required various governmental actors to coordinate multi-annual planning, as to ensure that the necessary national funding will be accordingly provided.

Bulgaria is now equipped with the tools and skills to address the challenges of meeting all (or at least most) European environmental standards within several years. This is an extraordinary change from 1997 and would not have been possible without the combination of incentives, mechanisms and assistance provided by the accession process.

²⁸ EC, *Main Administrative Structures Required for Implementing the Acquis*, Informal Working Document, May 2000 (update 7 June 2004), p. 73.
